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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/755,207	01/05/2001	Tao Chen	PA010098	5300

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Qualcomm Incorporated  
Patents Department  
5775 Morehouse Drive  
San Diego, CA 92121-1714

EXAMINER
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NGUYEN, TU X

ART UNIT	PAPER NUMBER
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2684

13

DATE MAILED: 06/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/755,207

Applicant(s)

CHEN ET AL.

Examiner

Tu X Nguyen

Art Unit

2684

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments filed 4/26/04 have been fully considered but they are not persuasive.

Applicant argue that Chheda does not disclose "sending a second pilot strength measurement message at a higher power level". Chheda disclose "at a position 250, a PSMM<sup>1</sup> is transmitted from the mobile...at a later time, at a position 260, a PSMM<sup>2</sup> transmitted from the mobile, Base station A,B,C have also increase there transmission levels , such transmission level at  $P_{new2}$ " (see col.9 line 64 through col.10 line 29) which reads on claim limitations.

In response to applicant's argument, page 8 specifically, Chheda is directed toward managing forward link power control by transmitting at reduced power levels when there are sufficient base stations available, that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Chheda discloses the base station will transmitting on its forward link at a higher power when a mobile approach nearby. While the mobile moving away from other base stations, consequently, other base stations may all be transmitting at the same power (see col.9 lines 25-

Art Unit: 2684

64). Also, the combination Chheda and Pittampalli is in the same field of endeavor. They are both improving in the field of handoff, handoff direction message, power algorithm, PSMM.

In response to applicant's argument, page 8, that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument, page 9 Odenwalder is directed to method of...., that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Chheda et al. and Odenwalder are both in the same field of endeavor PSMM, which are frames/packetized signal protocol.

Art Unit: 2684

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-6 and 8-9, are rejected under 35 U.S.C. 103(a) as being unpatentable over Chheda et al. (US Patent 6,160,999) further in view of Pittampalli et al. (US Pub 2002/0114288).

Regarding claims 1 and 6, Soliman discloses a wireless communication system, a method for call recovery comprising:

Art Unit: 2684

transmitting a pilot strength measurement message at a first transmit power level (see col.8 lines 35-52);

waiting a predetermined time period (see col.12 lines 20-21, "periodically" corresponds to "a predetermined time period"); and

transmitting the pilot strength measurement message at a second transmit power level, wherein the second transmit power level is greater than the first transmit power level (see col.12 lines 9-67).

Chheda et al. fail to disclose "call recovery".

Pittampalli et al. disclose "call recovery" (see par. 0019). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Chheda et al. with the above teaching of Pittampalli et al. in order to provide action to establish or receiver-establish calls by detects weak forward link conditions.

Regarding claim 2, the modified Chheda et al. discloses the second transmit power level is a maximum transmit power level (see Chheda, col.12 lines 25-67).

Regarding claims 3 and 8-9, the modified Chheda et al. discloses everything as claim 1 above. More specifically, the modified Chheda et al. discloses a computer program stored on a computer readable medium (see Pittamalli et al., par. 0040).

Regarding claim 4, the modified Chheda et al. discloses everything as claim 1 above. More specifically, the modified Chheda et al. disclose

Art Unit: 2684

incrementing a transmit power level prior to receiving a hand-off direction message (see Chheda et al. col.11 lines 3-22).

Regarding claim 5, the modified Chheda et al. discloses transmitting a pilot strength measurement message at each transmit power level (see Chheda, col.1 lines 34-65 and col.12 lines 9-24).

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Chheda et al., in view of Pittampalli et al. and further in view of Odenwalder et al. (US Pub 2002/0097780).

Regarding claim 7, the modified Chheda fails to disclose the pilot strength measurement message includes a preamble message.

Odenwalder et al. disclose the pilot strength measurement message includes a preamble message (see par. 0043). Therefore, It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Chheda and Pittampalli with the above teaching of Odenwalder in order to provide the optimal channel conditions can be determined at a base station through information transmitted by a remote station.

Art Unit: 2684

### Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tu Nguyen whose telephone number is (703) 305-3427. The examiner can normally be reached on Monday through Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MAUNG NAY A, can be reached at (703) 308-7749.

Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 2600 Customer Service Office at (703) 306-0377.

**Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**or faxed to:**

(703) 872-9314 (Technology Center 2600 only)

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

*Tu*  
May 25, 2004

*Quochien B. Vuong* 5/31/04

**QUOCHIE B. VUONG**  
**PRIMARY EXAMINER**